



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35666]

Union Pacific Railroad Company—Acquisition and Operation Exemption—San Pedro Railroad Operating Company, LLC

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under: (1) 49 CFR 1180.2(d)(1) to acquire and operate over San Pedro Railroad Operating Company, LLC's (SPROC) line segments between MP 1040.15 at Curtiss, Ariz., and MP 1041.32 near Curtiss (Parcel 1), and between MP 1071.16 and MP 1084 at Naco, Ariz. (Parcel 2), and to acquire all of SPROC's property rights, including SPROC's freight operating easement, in a line segment between MP 1041.32 and MP 1071.16 (Parcel 3),<sup>1</sup> whose underlying right-of-way UP currently owns, and to operate over the same; and (2) 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over a line between MP 1033.008 at Benson, Ariz., and MP 1040.15 at Curtiss (Leased Line), that SPROC currently leases from UP and operates.<sup>2</sup>

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<sup>1</sup> In San Pedro Railroad Operating Company, LLC—Abandonment Exemption—In Cochise County, Ariz., AB 1081X (STB served Feb. 3, 2006), the Board granted SPROC an exemption to abandon approximately 76.2 miles of railroad in Cochise County, Ariz., including Parcels 1, 2, and 3 at issue here. SPROC has sought, and received from the Board, numerous extensions of the abandonment authority consummation deadline for Parcels 1, 2, and 3, the last of which set the consummation deadline at September 24, 2012. San Pedro R.R. Operating Co.—Aban. Exemption—In Cochise Cnty., Ariz., AB 1081X (STB served July 5, 2012).

<sup>2</sup> UP has included a copy of the proposed trackage rights agreement between UP and SPROC and states that a copy of the signed agreement will be filed with the Board within 10 days of the filing of the subject verified noticed of exemption.

The earliest this transaction may be consummated is September 22, 2012, the effective date of the exemption (30 days after the exemption was filed).

According to UP, the purpose of assuming the rail operations over Parcels 1, 2, and 3, and acquiring the overhead trackage rights over the Leased Line is to maintain continuity of railroad service on the Curtiss Branch Line and preserve the Curtiss Branch Line for future and improved railroad service. UP states that acquiring the overhead trackage rights over the Leased Line would also provide the connection necessary for UP to serve and operate the southern portion of the Curtiss Branch Line.

In support of the exemption filed under § 1180.2(d)(1), UP states the Board previously granted SPROC the authority to abandon Parcels 1, 2, and 3, and that UP's acquisition of, and authority to operate over, those portions would not constitute a major market extension for UP because: (1) the Curtiss Branch Line does not extend to the international border with Mexico; (2) the Curtiss Branch Line is not in or near any major commercial markets or rail routes; (3) except for the Leased Line, the entire Curtiss Branch Line was approved for abandonment by the Board; and (4) UP currently retains real property ownership of the majority of the right-of-way that makes up the Curtiss Branch Line. In support of the exemption filed under § 1180.2(d)(7), the overhead trackage rights sought by UP over the Leased Line are based on a written agreement and such rights were neither filed nor sought by UP in a responsive application in a rail consolidation proceeding.

The acquisition exemption is subject to the conditions for the protection of railroad employees in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C. 2d 799, 814-26 (1990), aff'd sub nom. Railway Labor Executives' Association v. ICC, 930 F.2d 511 (6th Cir. 1991). As a condition to the trackage rights exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 14, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35666, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Mack H. Shumate, Jr., Union Pacific Railroad Company, Law Department, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

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Decided: August 31, 2012.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk

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